HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Court's order whether the case is or not approved for reporting)
(Chapter VIII Rule 32 (2((b)

Description of the Case.

Criminal Appeal No. 986 of 2001
(Old no. 1228 of 1983)

Kulwant Singh, ……Appellant

Vs.

State of U.P. …..Opp. Party

Approved for reporting.
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Not approved for reporting.

Date of Decision 16th August 2004.

Initial of Judge.

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HIGH COURT OF UTTARANCHAL AT NAINITAL.

Criminal Appeal No. 986 of 2001
Old no. 1228 of 1983

Kulwant Singh S/o Kudan Singh,
R/o Milakahnazir, P.S. Sitarganj,
District Nainital. ……Appellant

Vs.

State of U.P. …..Opp. Party.

Sri R.S. Sammal, learned counsel for the appellant,
Sri H.C. Pandey, learned A.G.A. for the State.

Coram:- Hon'ble M.M. Ghildiyal, J.
Hon'ble B.C. Kandpal, J.

Dated: Nainital August 16, 2004

(Delivered by Hon. B.C. Kandpal, J.)

This is a Criminal appeal arises out against the judgment and order passed by learned Sessions Judge, Nainital dated 20th May 1983 convicting the accused/ appellant Kulwant Singh u/s 302 I.P.C. and sentencing him to life imprisonment.

Brief facts of the prosecution case are that the accused/ appellant Kulwant Singh (hereinafter called as appellant) was coming to his village on a tractor from the side of Gurudwara on 7th June 1982. When he reached near to house of Pooran Singh in village Milakhnazir at 7:30 a.m. then he heard that somebody had abused him. The appellant left his tractor in his house and came near the house of Pooran Singh. Deceased Ramrakshpal was standing over there and the appellant asked as to why he abused him and started beating him. The a appellant, during the curse of beating dragged Ramrakshpal, deceased upto the cowshed belonging to Malkhan Singh. Mother of the deceased Ramrakshpal, Smt. Gangawati asked the appellant not to beat her son. The appellant left the place saying that he would see everyone.

After sometime, the appellant again came from his house with a double barrel gun in his hand he firstly shot at Ramrakshpal and then Smt. Gangawati causing their death.

Amar Singh complainant, who is the father of the deceased Ramrakshpal and husband of Smt. Gangawati had also reached at the spot and he tried to capture the appellant but the appellant threatened with dire consequences, hence he could not be captured. The appellant made his escape good from the place of occurrence.

The complainant Amar Singh, thereafter lodged the first information report of the aforesaid incident at police station Sitarganj (at present P.S. Nanakmatta) at 8:15 a.m. on the same day i.e. 07.06.1982. This first information report was scribed by one Ishwar Singh and the complainant lodged the written report at police station.

The postmortem on the body of Smt. Gangawati was conducted on 08.06.1982 at 11:00 a.m. and the doctor found following injuries on the person of Smt. Gangawati:-

Multiple gun shot wound circular 1/4 cm. in diameter front of abdomen. Pubic area upper part of left thigh. No blackening and tattooing and singing was seen.

The doctor opined that the death could be caused before 1½ day. The doctor also extracted 8 pellets from the body of Smt. Gangawati.

Autopsy on the body of the deceased Ramrakshpal was also conducted on 08.06.1982 at 11:30 a.m. and the doctor found following antemortem injuries:-

Gun shot wound 1/3 cm. on upper arm, front and top of right shoulder fracture of underlying bone. Front part injured. Pellets were seen at places. Blackening and tattooing and signing seen.

The doctor extracted 17 pellets and a wad piece from the body of the deceased Ramrakshpal. The doctor also found that the death could have been caused 1 1/2 day before.

The doctor opined that the injuries on both the deceased persons could be caused by firearm.

The investigating officer recovered the double barrel gun from the house of Kundan Singh, father of appellant Kulwant Singh, alongwith the belt containing 11 cartridges therein. The investigating officer, after completion of the investigation submitted the charge sheet against the appellant Kulwant Singh before the Court.

After submission of the charge sheet, the appellant was committed to the Court of Sessions and he appeared before the Court of learned Sessions Judge, Nainital in order to face his trial.

Learned Sessions Judge, Nainital on 16.12.1982 framed the charge against the appellant u/s 302 I.P.C. The appellant denied of the charge leveled against him and claimed his trial.

The prosecution on order to support his case, produced P.W.1 Amar Singh (informant), P.W.2 Narayan Singh & P.W.3 Jaswant Singh (both eye witnesses), P.W.4 Tularam (eye witness), P.W.5 Dr. R.C. Gupta (conducted postmortem), P.W.6 Head Constable Sukhpal Singh, P.W.7 Constable Ramashankar (both formal witnesses), P.W. 8 Ishwar Singh (scribe of F.I.R.), P.W. 9 Narayan Singh (witnesses of the recovery memo), P.W. 10 Head Constable Amar Singh (formal witness) and P.W.11 Sub Inspector Mahendra Pal Singh (Investigating Officer).

After the evidence of the prosecution was over, statement of the appellant were recorded u/s 313 Cr.P.C. the appellant did not adduce any evidence in his defence.

Learned Trial Court, after hearing counsel for both the parties and having perused the evidence record, convicted

the appellant u/s 302 IPC and sentenced him to life imprisonment vide judgment and order dated 20th May 1983.

Feeling aggrieved by the aforesaid impugned judgment and order, the convict (appellant) filed the present appeal before the Hon'ble High Court of Allahabad which has been transferred to this Court after creation of State of Uttaranchal, for disposal.

We have heard learned counsel for the appellant as well as learned A.G.A. and perused the record.

Learned counsel for the appellant has firstly submitted that the first information report in the present case, itself appears to be doubtful. It has been submitted that the scribe of the first information report is Ishwar Singh who has been produced by the prosecution as P.W.8. It has been submitted that this witness is not a resident of the place where the incident had taken place but of a different place which is at a distance of about 15 k.ms. from the place of occurrence, therefore, the credibility of the report, itself appears to be doubtful. It has been submitted that first information report could not be lodged at the time i.e. 8:15 a.m., particularly in view of the fact that the incident had taken place at 7:30 a.m.

We do not find any force in this argument advanced by the learned counsel for the appellant. It is quite clear room the perusal of the deposition of P.W.8 Ishwar Singh that he had come to the house of his sister who is married with Narain Singh S/0 Ganga Ram in village Milkanazir. In view of this deposition, the presence of this witness on the date of the occurrence in the village, appears to be quite natural.

Moreover, deposition of P.W.1 Amar Singh also reveals that he got the written report scribed immediately after the occurrence at the spot. This witness has, of course, forgotten the name of the scribe of the first information report but he has

specifically stated that the scribe of the first information report belong to village Zadavpur and he had been in the village of the occurrence on that date in his relation and reached at the place of the occurrence after hearing hue and cry. This witness has further stated that the scribe of the first information report had come to the house of Narain Singh S/o Ganga Ram. Therefore, under the aforesaid circumstances the presence of the scribe of the first information report on the date of the occurrence in the village, where the incident took place, appears to be quite natural. The first information report in this case has been promptly lodged by the informant P.W.1 Amar Singh at police station Sitarganj. The incident alleged to have taken place at 7:30 a.m., while the first information report could be lodged by P.W.1 Amar Singh at 8:15 a.m. The distance of police station from the place of occurrence is about 4 kms. It has come in the deposition of P.W.1 Amar Singh that he had gone to the reporting police outpost Nanakmatta (P.S. Sitarganj) by tractor and Tula Ram, Jaswant Singh and Narian Singh had also companioned him upto the reporting police outpost, Nanakmatta in order to lodge the first information report.

Ext. A-6 is the copy of G.D. of R.O.P. Nanakmatta, P.S. Sitarganj dated 07.06.1982, which shows that informant Amar Singh had gone to the R.O.P. Nanakmatta alongwith the written report pertains to the incident. It further shows that Tula Ram, Narain Singh and another persons were also in his company at that time.

In the aforesaid circumstances, we are of the view that the first information report is without any inordinate delay and keeping in view the promptness, the possibility of false implication of the appellant in the present case is completely ruled out.

Learned counsel for the appellant has further argued that the motive in the present case as has been assigned to the appellant by the prosecution is quite weak and the motive attributed to the appellant does not give him an occasion to commit double murder.

We again do not find any force in this argument. In commission of any crime, the motive firstly, does not play an important role as it is the only accused, who can tell as to what factor played in his mind at the time of the commission of crime. Secondly, if other prevailing circumstances and the evidence on record corroborate the prosecution case, then the motive certainly falls at second place. However, in the instant case, the cause of action arose when the appellant gathered an impression in his mind that it was the deceased Ramrakshpal who abused him and the appellant under the same impression beat Ramrakshpal, and when Smt. Gangawati, mother of deceased Ramrakshpal, tried to intervene then the appellant left the place by saying that he will see all the persons assembled over there after some time, and immediately after few moments, the appellant appeared at the place of occurrence with a double barrel gun in his hand and fired a shot at Ramrakshpal and Smt. Gangawti causing their spontaneous death.

Learned counsel for the appellant has further argued that the medical version does not support the prosecution case in this case. It has been submitted that P.W.1 Amar Singh has deposed in paragraph 20 of his deposition that Kulwant Singh fired at the deceased from a distance of 6-7 paces and presence of blackening, tattoing and singing over the injuries on the person of Ramrakshpal belies the prosecution case.

The argument advanced by the learned counsel for the appellant in this regard appears to be without any force as the

distance, which ahs been stated by Amar Singh, cannot be taken to be conclusive truth. The manner in which the incident has taken place clearly shows that the appellant, first of all, fired shot at Ramrakshpal causing his spontaneous death. The appellant thereafter, fired another shot at Smt Gangawati causing her death at the spot. The site plan reveals that the distance of the deceased Ramrakshpal from the appellant is only 2 paces while the distance of Smt. Gangawati from the appellant is about 8 paces, therefore, under these circumstances it is quite clear that on the person of Smt. Gangawati there would not be any blackening, tattoing and singing over the injuries. While keeping in view the distance of deceased Ramrakshpal, the blackening, tattoing and singing would be natural. Hence, we do not find any infirmity in the ocular and the medical version.

Learned counsel for the appellant has further argued that the testimony of the witnesses in the present case appear to be doubtful as the presence of the witnesses at the spot does not appear to be natural.

On the assessment of the testimony of the eye witnesses produced by the prosecution, it reveals that Amar Singh who is the informant and father of deceased Ramrakshpal as well as husband of deceased Smt. Gangawati reached at the place of the occurrence after hearing hue and cry. The place of the occurrence in front of cowshed belong to Malkhan Singh. This witness has stated that the witnesses Tula Ram, Narain Singh and Jaswant Singh also reached at the place of the occurrence. This witness has stated that when he reached at the place of occurrence the he saw that the appellant Kulwant Singh was beating Ramrakshpal with kicks and fists and when his wife Smt. Gangawati asked Kulwant Singh as to why he was beating Ramrakshpal, then the appellant left the spot by saying that he

will see all of them after some time. Thereafter, the appellant appeared at the scene of the occurrence with a double barrel gun in his hand and caused the death Ramrakshpal as well Smt. Gangawati by firing at them.

The presence of this witness at the place and time of occurrence appears of be quite natural as this witness is resident of few paces from the place of occurrence, and hearing the hue and cry of his son and wife, he must have reached at the place of occurrence. This witness has categorically stated that the appellant, after reaching the place of occurrence with a double barrel gun in his hand, firstly fired at Ramrakshpal and thereafter fired at Smt. Gangawati causing their spontaneous death Nothing has come out in the cross examination of this witness which may suggest that this witness is telling lie making his presence doubtful at the place of occurrence.

As far as the testimony of other witnesses, namely, Narain Singh and Jaswant Singh are concerned, these witnesses have turned hostile, therefore, no comment or observation can be made regarding their deposition.

P.W.4 Tula Ram is another eye witness who has been produced by the prosecution in order to support the testimony of P.W.1 Amar Singh. P.W.4 Tula Ram has, of course, corroborated the testimony of Amar Singh as far as the first part of the occurrence is concerned i.e. with regard to the 'Marpit' took place between appellant and Ramrakshpal. This witness has further deposed that when Gangawati asked the appellant as to why he was beating Ramrakshpal then the appellant left the place by saying that he will see all of them after sometime and the appellant again came back at the place of occurrence and he caused the death of Ramrakshpal and Smt. Gangawati by firing at them. In the cross examination, this

witness has, of course, stated that he did not see the appellant firing at the deceased but this witness has subsequently deposed in his statement that he saw the appellant Kulwant Singh leaving the place after firing at the victims. Therefore, the witness has certainly corroborated the testimony of P.W.1 Amar Singh pertaining to this fact that he same the appellant immediately after the occurrence leaving the place with a gun in his hand. The testimony of P.W.1 Amar Singh finds corroboration by the deposition of P.W.4 who, of course, stated a different version in his cross examination by saying that after hearing the sound of firing he again reached at scene of occurrence and saw that it was the appellant who was leaving the place of the occurrence with a gun in his had immediately after firing and he saw Ramrakshpal and Smt. Gangawati were lying on the ground on account of gun shot injuries on their person.

Learned counsel for the appellant has argued that it is the case of solitary evidence and no reliance can be attached to the solitary evidence of Amar Singh is certainly an interested witness.

This argument is devoid of any force. Amar Singh is certainly an interested witness, being father of deceased Ramrakshpal and husband of deceased Smt. Gangawati, but his testimony cannot be said to untrustworthy. Firstly, on the ground that it is daylight occurrence and the presence of this witness could not have been doubted in any manner. Secondly, this witness resides within a very short distance from the place of the occurrence and he reached at the place of the occurrence after hearing hue and cry and lastly, the testimony of this witness finds corroboration by the testimony of P.W.4 Tula Ram pertaining to the factum of the occurrence. Therefore, the presence of the appellant at the place of occurrence with the

double barrel gun and firing at deceased Ramrakshpal and Smt. Gantgawati cannot be doubted in any manner.

Hon'ble the Apex Court in the decision cited in 2003 SSC (Criminal) page 169 has clearly observed as follows:-

"Relationship is not a factor to effect the credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and made allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible."

Therefore, in the instant case, the testimony of Amar Singh cannot be said to be untrustworthy as there is no such universal rule as to warrant rejection of the evidence of a witness merely because he is a related or interested one. In this case the presence of P.W. 1 Amar Singh at the time of occurrence is proved and the same is considered to be natural hence it provides a good and sound basis for conviction of appellant.

Learned counsel for the appellant has also cited **2002 CAR, page 312 (S.C.) and 2002 CAR, page 19 (S.C.)** and has submitted that in a criminal case where no independent witnesses have come forward to corroborate the prosecution case then the same become doubtful.

We have gone through the cases cited by the learned counsel for the appellant we are of the view that both the cases do not apply to the facts and circumstances of the present case.

Learned counsel for the appellant has further cited **2002 CAR, page 385 (S.C.)** and has submitted on the basis of this decision that the father who is the sole eye witness in the present case did not try to save his son and wife, therefore this peculiar behavior of P.W. 1 Amar Singh creates doubt in the prosecution case and this circumstance shows that Amar Singh

was not present at the place of the occurrence when the incident took place.

We are unable to accept the argument advanced by the learned counsel for the appellant as facts in the decision cited before us are absolutely different with the facts and circumstances in the instant case as the Hon'ble Apex Court in the cited case disbelieved the prosecution case on the ground that the conduct of the only eye witness was highly unnatural and improbable and the and the presence of that eye witness at the place and time of occurrence was found doubted and incredible. It was an occurrence committed in the night in the case cited before us, while in the instant case it is the daylight occurrence and witnesses had full opportunity to see the occurrence.

In the present case, the appellant was having double barrel gun in his hand while the complainant and other persons assembled at the place of the occurrence were empty handed. Therefore, there must be reasonable apprehension in the mind of the complainant that the appellant who was having a gun in his hand could assault with that gun, in case the complainant would attempt to either capture or to chase him. Further, the presence of P.W.4 Tula Ram in the instant case also could not be doubted under the circumstances that he is the resident of only 4-5 paces from the cowshed of Malkan Singh where the incident took place. Therefore, this case cannot be said to be a case of solitary evidence as we have already observed that the testimony of the complainant Amar Singh finds corroboration with the other eye witness Tula Ram specially with regard to the facturm of the occurrence as well as presence of the appellant at the scene of the incident.

Another important factor in the present case is the recovery of the licenced gun fro the house of the appellant as

the record shows that the double barrel gun belonging to Kundan Singh who is the father of the appellant was subsequently recovered from his house. This gun was sent for examination to the ballistic expert, and the report of the ballistic expert shows that the disputed cartridges were fired by this double barrel gun, which was found from the house of Kundan Singh, father of the appellant. There is no iota of evidence to suggest that the appellant does not live with his father Kundan Singh. Therefore, recovery of the gun involved in this incident further strengthen the prosecution case.

The ballistic expert report was tendered by the prosecution before the Court below and this document was admitted by the defence. Narayan Singh P.W.9 is a witness who has deposed that two cartridges were found at the place of the occurrence and the police prepared the memo with regard to these two cartridges. The double barrel gun was also recovered in the presence of this witness from the house of Kundan Singh, the father of the appellant. Therefore, we do not find any reason to disbelieve the testimony of P.W.9 who has proved the recovery of the two empty cartridges from the place of the occurrence as well as recovery of the double barrel gun connects the appellant with the commission of crime i.e. firing at Ramrakshpal and Smt. Gangawati causing their death.

On the basis of the assessment of the evidence we come to the conclusion that the prosecution has established the gullet of the appellant beyond reasonable doubt by adducing cogent and reliable evidence.

The Trial Court has rightly convicted the appellant u/s 302 I.P.C. and sentenced him to life imprisonment and we do not find any ground in this appeal for interference in the judgment and order passed by the Trial Court.

The appeal, thus, being devoid of any merit is accordingly dismissed. The conviction and sentence awarded by the Court below is confirmed.

The record of the court below be returned immediately and learned C.J.M concerned is directed to take the appellant into custody, in order to serve out the sentence imposed against him by the trial court.

(B.C. Kandpal, J.) **(M.M. Ghildiyal, J.)**

August 16, 2004:
NCM: